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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

WALKER RIVER PAIUTE TRIBE,

Plaintiff-Intervenor,

v.

WALKER RIVER IRRIGATION DISTRICT,  
a corporation, et al.,

Defendants.

UNITED STATES OF AMERICA,  
WALKER RIVER PAIUTE TRIBE,

Counterclaimants,

v.

WALKER RIVER IRRIGATION DISTRICT,  
et al.,

Counterdefendants.

) IN EQUITY NO. C-125-RCJ  
) SUBFILE NO. C-125-B  
) 3:73-CV-00127-RCJ-WGC  
)

) **WALKER RIVER IRRIGATION**  
) **DISTRICT'S RESPONSE TO JOINT**  
) **MOTION TO ALLOW SERVICE BY**  
) **PUBLICATION IN THE C-125-B**  
) **CASE**  
)

1 The Walker River Irrigation District (the “District”) does not oppose the Joint Motion to  
2 Allow Service by Publication (Dkt. 2163). However, it is not clear that the requirements for  
3 service by publication on unknown defendants are met here.

4 Fed. R. Civ. P. 4(e)(1) allows persons to be served by “following state law for serving a  
5 summons in an action brought in courts of general jurisdiction in the state where the district  
6 court is located or where service is made.” Under that Rule, the Court must not only consider  
7 the provisions of Nevada and California law on how service by publication is to take place, but  
8 also the provisions concerning when service by publication is appropriate. Service by  
9 publication is allowed in Nevada and California when the subject of the action relates to  
10 property in the state in which a defendant has or claims an interest, and that is subject to the  
11 jurisdiction of the court, or where the relief demanded in the action consists wholly or in part of  
12 excluding such person from any interest therein. See, Nev. R. Civ. P. 4(e)(1)(ii); Cal. Code  
13 Div. P., Section 415.50(2). [Emphasis added].

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16 The issue of whether this Court has jurisdiction over groundwater in Nevada or  
17 California has not been determined, and is being challenged. Therefore, the requirement for  
18 publication under Nevada and California law that the court have jurisdiction over the property  
19 may not be met as to claimants to groundwater. Because Subproceeding C-125-B does not  
20 involve any determination of water rights of any of the defendants, known or unknown, or of  
21 the relative relationship of their water rights to the water rights which the Tribe and the United  
22 States seek to obtain in this proceeding, the relief demanded in the action will not exclude  
23 defendants from the use of water.  
24

25 Therefore, under the provisions of Nev. R. Civ. P. 4(e)(1)(ii) and Cal. Code Civ. P.  
26 Section 415.50(2), the requirements for service by publication on unknown defendants may not

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1 be satisfied. Nevertheless, because publication may inform the public about this  
2 subproceeding, the District does not oppose the Motion.

3 Dated: February 25, 2015.

4 WOODBURN AND WEDGE

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**CERTIFICATE OF SERVICE**

I certify that I am an employee of Woodburn and Wedge and that on the 25th day of February, 2015, I electronically served the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following via their email addresses:

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/s/ Holly Dewar  
Holly Dewar